

CHAPTER II.

MANAGEMENT AND WORKING OF FORESTS.**I. ACQUISITION AND DISFORESTATION OF LAND, ETC.****A. Acquisition of Lands for Forests under the Indian Forest and Land Acquisition Acts.**

96. Whenever the Forest Department propose to take up lands for forests, the application should invariably be forwarded, in the first place, to the Collector of the district, who should submit the matter with his opinion thereon to the Commissioner of the division. The opinion of the Collector should always be given *fully*.

Government look to the Collectors, who are in a better position to judge than Forest Officers, that in no instance is more money given by Government for the rights of occupancy of its own land than is absolutely necessary.*

Lands not acquired should not be notified under section 4 of the Indian Forest Act.

97. Unless a field is duly acquired by Government either by purchase or otherwise it is improper to notify it under section 4 of the Forest Act. Such notifications are productive of unnecessary confusion and trouble.†

98. Actually occupied survey numbers cannot be declared to be reserved forest or dealt with under section 4 of the Indian Forest Act, 1878. If such numbers are urgently required for forest purposes, possession of them will have to be obtained under the Land Acquisition Act, in accordance with section 83 of the Indian Forest Act.‡

The case in which the Land Acquisition Act is required to acquire lands for forests.

99. It is not desirable to bring into operation the provisions of the Land Acquisition Act in order to secure land for forest, except in special cases when the immediate acquisition of the occupied land is urgently needed. It is undesirable to employ the Land Acquisition Act for the purpose of acquiring land to round off a forest block which is intended to be classified as pasture.§

Land Acquisition Act should only be applied where absolutely necessary.

100. Applications to take up land under the Land Acquisition Act should invariably be forwarded to Government by Collectors in the Presidency proper, through the Commissioners. It should be invariably stated by what agency the work for what the land is required is to be carried out.||

Channel for submission of proposals to take up land.

* Government Resolution No. 1653, dated 26th March 1879.

† Government Resolution No. 7537, dated 25th October 1886.

‡ Government Resolution No. 2571, dated 17th May 1880.

§ Government Resolutions No. F. D. 3530, dated 30th December 1887; No. 3950, dated 21st December 1888; No. 2483, dated 30th March 1889; and No. 9019, dated 16th November 1892.

|| Government Letter No. 2394, dated 7th June 1865.

Section 104, page 39.

Add the following as a clause to this :—

“*In the absence of an agreement*, possession of land should not be taken except where it is permitted either under the orders of Government issued in conformity with the provisions of section 17 of the Land Acquisition Act or in due course after an award has been made under section 16 of that Act. (Government Resolution No. 4251, dated 10th May 1910, Revenue Department).”

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Opinion of Forest Settlement Officer to be taken when purchase of land is proposed.

101. In all cases in which it is proposed to purchase lands for forests, the Divisional Forest Officer should submit the application to the Forest Settlement Officer in the first instance for opinion.*

Forest Settlement Officer should always consult the Conservator before exchanging lands.

102. The Forest Settlement Officer should always consult the Conservator before actually concluding any exchange of notified forest land for other land.†

103. If Government occupied lands are required for forests, they must be acquired in the usual manner. The process of acquisition of all the area needed may be gradual and long, but this is preferable to securing the land by either paying rent for it on a lease, or giving for it certain forest rights.‡

104. No land can be taken up under the Land Acquisition Act until a declaration has been made and published by Government under section 6, to the effect that such land (describing it) is needed for a public purpose. Under section 7, the appointment of a Collector or Special Officer to take order for the acquisition of the land should follow and not precede such appointment.§

105. Collectors cannot, without the sanction of the Commissioners and Government, transfer lands to the Forest Department.||

106. Commissioners are authorized to sanction purchase of lands, the inclusion of which in forests has already been approved by Government, provided there is a budget provision to meet the expenditure proposed to be incurred in each case.¶

All Collectors (including the Collectors and Deputy Commissioners in Sind) are authorized to sanction the use of Forest land for another Government purpose up to a limit of 5 acres without reference to Government; if the Conservator concerned has no objection. The sanction of the Commissioner should be obtained when the area exceeds that limit.§

The formal alienation from the reserved forest area of land so used is unnecessary.**

* Government Resolution No. 1045, dated 7th February 1883.

† Government Resolution No. 5888, dated 21st July 1885.

‡ Government Resolution No. 5858, dated 20th July 1885.

§ Government Resolution No. 7440, dated 5th October 1883.

|| Government Resolution No. 6460, dated 14th December 1878.

¶ Government Resolution No. 1609, dated 27th February 1883.

§ Government Resolution No. 2657, dated 13th March 1907.

** Government Resolution No. 6473, dated 29th June 1908.

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107. For the procedure for the payment of compensation for land taken up for public purposes under the Land Acquisition Act, 1895, No. 1451 of 1st March 1902, and No. 1800 of 12th March 1898.

Compensation for lands acquired under the Land Acquisition Act,

108. Notifications under sections 19, 28 and 29 (b) of the Indian Forest Act should be in the forms given below :—

Notifications.

In exercise of the powers conferred by section 19 of the Indian Forest Act, 1878, the Governor in Council is pleased, with reference to Notification* No. , dated the , published at page of the *Bombay Government Gazette* of , to declare the land comprised within Survey Nos. in the village of in the taluka of the District to be a reserved forest from the of 19 .

By order, etc.†

NOTE.—Lands with regard to which the provisions of Chapter II have been duly carried out and which have been notified as Protected Forests under section 28, can, without further enquiry being made, be notified under section 19.‡

109. In exercise of the power conferred by section 28 of the Indian Forest Act, 1878, the Governor in Council is pleased to declare the land comprised within the Survey numbers or portions of Survey numbers hereinbelow mentioned in the village of in the taluka of the District to be a protected forest.

Form of notification for Protected Forests (section 28 of the Indian Forest Act).

Survey numbers above referred to :—

By order, etc.

110. In exercise of the power conferred by section 29 (b) of the Indian Forest Act, 1878, the Governor in Council is pleased to declare that the portion of the protected forest of the taluka of the District comprised within Survey Nos. of the village of be closed for a term of years from the date of this notification, and that the rights of private persons (if any) over such portions shall be suspended during the said term.

Form of notification for closure of certain portions of Protected Forest (section 29 (b) of the Indian Forest Act).

By order.§

* NOTE.—Preliminary notification issued under section 4 of the Forest Act.

† Government Memo. No. 83, dated 6th January 1883.

‡ Government Resolution No. 5305, dated 31st May 1906.

§ Government Resolution No. 673, dated 1st February 1881.

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Data required when submitting notifications for publication.

111. In all draft notifications relating to forests submitted to Government the correct names of the villages should be entered in the Devanagari character below the English spelling.*

112. Cases arise in which it may be desirable to publish, by means of a fresh notification, an amended description of the boundaries of forest reserves already notified under section 19 of the Indian Forest Act, or under other forest enactments. It has been ascertained that there is no legal objection to this course, if the fresh notification provides for the substitution of the boundaries for that which was originally notified, and which, though purporting to describe the boundaries as they existed at the time, has subsequently become incorrect or proved to be open to misconstruction. The appended form of notification is considered suitable for such cases and may be employed whenever necessary. The procedure permitted in the foregoing paragraph must not be held to extend to any such alteration of the boundaries on the ground as would involve either the inclusion of new areas or the exclusion of lands which have already been notified as reserved forest. Such changes require either new settlement or, in the case of disforestation, the previous sanction of the Government of India.

112A. With reference to Notification No. _____, dated _____, published under section _____ of the Indian Forest Act (VII of 1878) at page _____, declaring the _____ forest to be reserved forest, _____ is pleased to direct that the following amended and more accurate description of the boundaries of the said forest be substituted for the description contained in the said notification.†

112B. ‡ Rules regarding Alluvion and Diluvion, owing to changes in the Course of the River Indus, or other waters, in the Province of Sind :—

1. Any land separate from the main banks of the river or seashore by a channel, which contains water throughout its length during the whole year, is to be considered an island.

2. Islands newly thrown up by the river or sea are the property of Government.

* Government Memo. No. 83, dated 6th January 1883.

† Government of India, Department of Revenue and Agriculture, No. 10-F, dated 20th June 1893, vide Government Resolution No. 5338, dated 25th July 1893.

‡ These rules which were framed by Mr. Frere and issued on the 22nd May 1852 were declared to have the force of law under section 45 of the Indian Councils Act by the Government of India Notification No. 1254, dated 30th November 1880 (*vide* Sind Official Gazette dated 11th December 1880).

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3. All new land not separated from the main land by a channel, containing water throughout its length during the whole year, is to be considered as the property of the owner of the old land to which it is annexed, subject to Government assessment in the cases provided for in the rules below.

4. These rules hold good only in cases of lands newly thrown up by the river in such a manner as to make it impossible to identify them with any lands which may have previously existed on the same spot and been since swept away. If the river, by a sudden change in its course, cut off a portion of an estate without gradual encroachment, so as merely to separate such portion of land from the rest of the estate to which it previously belonged, without destroying the identity or preventing the recognition of the land so cut off, then the land, on being clearly and unmistakeably identified, will continue to be held on the same tenure as before its separation.

5. But no weight should be allowed to the pretended recognition of lands which have been so entirely swept away at some previous period that they disappeared during the whole of a season, and which, on the river again changing its course, are supposed to reappear, merely because in situation or composition they somewhat resemble those previously swept away. These would come under rules 2 and 3.

6. Where lands bordering on the river are leased out by Government it is to be the rule that, whenever $1/10$ th of the land or a portion of the land yielding $1/10$ th of the rental may be swept away the lessee can claim a resettlement of the estate. On the other hand, the Government can assert no claim to assess any increment to lands so leased, unless it amounts in extent or produce to more than $1/10$ th of the estate leased.

7. This rule should be observed even though no provision for such a contingency may have been made in the original lease.

8. When a revision of settlement takes place under these rules on the plea of diluvion, if the total assets of the whole estate settled be found to be from any cause as large as, or larger than, they were computed to be at the time of settlement, the claim for reduction in the lease will be disallowed. If they be less, a proportionate deduction will be allowed, the assessment being calculated on the whole existing assets, in the same manner as when the settlement was originally made.

9. And when Government claim an increase of assessment on account of increment above $1/10$ th, the lessee may, at his option, either have the whole estate resettled, or come under a new engagement for the sum which may be demandable upon the newly accrued portion alone.

Rule, paragraph 262 of
Directions for Revenue
Officers, North-West
Provinces, No. 211.

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10. Remissions of assessment granted on account of diluvion in fixed leases are to be reported to the Commissioner, and likewise increase of assessment on account of alluvion.

11. Holders of lands in Jagir, or on other rent-free tenure, are to be left in possession of all lands attached to their estates under Rule 3, provided the increment does not exceed by more than 10 per cent. of the land which they held at the date of the latest confirmatory grant issued by competent authority.

12. If the increment exceed 10 per cent., all lands, beyond those previously held under sanction of competent authority, will be liable to assessment, but remain the property of the holder of the original rent-free estate.

13. In cases, however, where a certain fixed quantity of land has been granted rent-free, and not a village, mukam or estate, then the holder can have no claim on any increment to his original lands.

14. If, on any claim being preferred by Government to assess lands newly attached to rent-free estates, it be proved that more or an equal amount of land has, since the date of the last confirmatory grant to the rent-free holder, been lost by diluvion from the same estate, then the claim to assess shall be disallowed.

15. This plea is in no case to hold good with reference to lands which had been swept away before the conquest of Sind.

16. If a rent-free estate be entirely carried away, the holder will have no claim to a new grant, nor in the event of new lands being subsequently formed by the river again receding will rent-free estate be revived. The new lands will be an increment to the estate to which they are attached under Rule 3.

17. Where villages or estates have been granted subject to payment of a quit-rent, Government will not claim to assess any increment until it reaches 10 per cent.; when it exceeds 10 per cent. the whole of the increment will be liable to the ordinary assessment.

A holds in Jagir $\frac{1}{4}$ of the Government revenue of the village of Sayadpur, producing Rs. 10,000 per annum.

(a) Case.—Land producing Rs. 500 per annum is swept away. A will receive only $\frac{1}{4}$ of the remaining Rs. 9,500.

(b) Case.—A similar amount of land is added. A will then receive $\frac{1}{4}$ of Rs. 10,500.

(c) Case.—Land yielding a revenue of Rs. 2,000 is swept away. A will receive $\frac{1}{4}$ of Rs. 8,000.

(d) Case.—Land yielding Rs. 2,000 is added. A has still a right to only $\frac{1}{4}$ of Rs. 10,000.

(e) Case.—The village in 1848, when the grant was confirmed to A, yielded Rs. 15,000 Government revenue, though latterly the value has been only Rs. 10,000. In this case if land yielding Rs. 2,000 be added, A will receive a $\frac{1}{4}$ of the additional Rs. 2,000 as well as of the Rs. 10,000.

18. The same rules which would apply to alienations or leases of the whole Government share shall be applicable where only a fractional portion of such share has been alienated, the addition or deduction, as the case may be, being proportioned to the extent to which the rights of Government may in each instance have been alienated.

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19. Claims founded on grants by competent authority, specifying particularly the alienation of alluvial land formed by increment, must be decided specially on consideration of the terms of the grant.

20. If cases should arise in the Civil Courts involving questions of alluvion and diluvion, the litigants should be called upon to prove, if possible, the local usage, and by that, if the practice be clear and free from doubt, the Court should decide all cases relating to alluvial land between the parties where estates may be liable to such usage. Where this proof fails, the Court should decide in the spirit of the above rules.

112C. Alluvial Lands claimed by the Forest Department :—

1. It has been brought to the notice of the Commissioner in Sind that it has hitherto been the practice of the Officers of the Forest Department to take possession of any land thrown up by the river along the frontage or in the neighbourhood of forest land to which they have or imagine they have a claim under the Alluvion or Diluvion Rules. This procedure constantly gives rise to vexatious disputes which would not otherwise have arisen, and has in several cases been the cause of needless complications with the Khairpur State.

2. The Alluvion and Diluvion Rules were intended to determine the proprietary rights of private individuals as against Government. They cannot be held to apply to a Government Department. The question whether any new land should or should not be included in a Reserved Forest is one which must be decided on grounds of public expediency alone, and the main consideration by which officers should be influenced in coming to a decision is whether it is probable that the land will ever become of value as forest land or whether it would not be more profitable under cultivation.

3. The following instructions are issued for the guidance of officers who may be called upon to decide such cases in future :—

(1) When any land is thrown up by the river along the frontage of, or in the neighbourhood of, forest land the Collector will in the first instance decide whether any private individuals have rights in the land under the Alluvion and Diluvion Rules.

(2) If it is decided that no such rights exist, the Collector will then decide in concert with the Conservator of Forests whether it is expedient that the land should be included in the forest or not. In case of disagreement the matter may be referred to the Commissioner for decision.

(3) The Forest Department must, under no circumstances, take possession of any such land without the previous consent of the Collector of the District or the orders of the Commissioner in Sind.

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4. All cultivation within forest limits must be assessed at the prevailing rates of ordinary Government land in the same taluka. The Conservator will arrange that sufficient test measurements are taken to insure that the whole of the area cultivated has been correctly measured.

112D. Printed letter No. 71 to the address of the Conservator of Forests, Sind Circle, and Circular No. 72 are reproduced below :—

No. 71.—With reference to the correspondence ending with your No. 1483 of the 3rd instant, I have the honour to observe that Mr. Prichard, in laying down, in his Circular No. 1238 of the 11th April last, the general principles on which questions regarding kacha lands claimed by the Forest Department are to be disposed of, appears to have purposely left it to the Conservator to settle, in consultation with the District Officers concerned, the procedure to be followed in giving effect to them.

2. As matters now stand, however, I agree with you in thinking it may save confusion and delay to add a few brief rules as to the time within which, and the manner in which, claims should be made and decided. I append a copy of a supplementary Circular I have issued with that object, and shall be obliged by your instructing your subordinates to conform to it in supersession of your orders referred to by the Collector of Hyderabad in his Memorandum No. 4184 of the 19th ultimo to your address.

3. It is not necessary that any marks, whether permanent or temporary, should be put up by the Officers of the Forest Department on the ground till it has been finally decided to belong to them, and there are objections of principle to their doing so.

4. It is better also to avoid any reference to the Alluvion and Diluvion Rules, except in their application to private claims. The fact that a newly formed kacha adjoins a reserved forest, or that it takes the place of land lost by erosion from a reserved forest, must of course always have a bearing—the importance of which every Revenue Officer will at once admit—on the decision of the question whether it should be placed under the management of the Forest Department or not. But this is a matter altogether apart from the Alluvion and Diluvion Rules, which, as has been pointed out both in Mr. Prichard's Circular and more than once in the correspondence, have no application to accretions not adjoining land privately owned or occupied, and which are binding neither on the Forest Department in making their claims nor on the Revenue Department in disposing of them.

5. I observe that, in the course of the correspondence, you have contended that in the case of forests which have been notified as Reserves with the river as a boundary, all accretions which may be thrown up between the forest as it exists at any given time and the river, irrespective of any changes which may have taken place in the channel since the date of the notification, form part of the reserve *ipso*

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facto, and cannot legally be taken from the Forest Department except by formal disforestation. This contention, if it were admitted, might lead to serious complications, as for instance, in the case of a recognisable piece of land belonging to a private owner, or even to a foreign state, being cut off and transferred to a forest frontage by a sudden change in the channel. I may add that it would not in my opinion hold good in law. The strict legal interpretation of such notifications as you refer to would, I believe, give to the Forest Department nothing beyond a line drawn along the centre of the river bed as it ran at the date of the notification, irrespectively of subsequent changes. Apart from practical difficulties and inconveniences, such an interpretation would certainly prove inconsistent with the real interests of Government in many cases, as well as with their intentions, as declared in various enactments and rules having the force of law, amongst others, in the Land Revenue Code and Rules.

6. You need not, as far as I can see, be under any apprehension that the rules laid down by Mr. Prichard will operate to 'reduce' unduly the area of reserved forest. I think you will find the Revenue Officers quite ready to recognize, in the absence of any special reason to the contrary, the expediency of leaving such kachas as adjoin original forest frontages in the hands of the Forest Department, and to take a reasonable view of any proposals you may make for enforesting kachas, even when they do not adjoin forest frontages, if they appear to be specially adapted for the production of timber and firewood in localities where the demand cannot be conveniently or sufficiently supplied from existing reserves. In any case in which you may consider that the interests of Government in the Forest Department have not been sufficiently consulted, you have, as you know, the right of reference to this office.

7. It must, however, be clearly understood that accretions, wherever they may form, are, with rare exceptions, the property of Government, that is, of the State, and not of any particular Department or individual, until such time as they have been disposed of by the Collector under the provisions of the Land Revenue Code and the Rules framed under it. Section 64 of the Code and the Rules direct that, in certain cases, the preferential claim of the holders of adjoining lands should be recognized. In all other cases, the question whether the accretion should be placed under the management of the Forest or of any other special Department, or disposed of for cultivation in ordinary course, must be decided on the broad ground of general expediency. What is essential, both in order to prevent disputes and to secure the interests of Government from all points, is that neither the Forest Department nor anyone else should take possession of any accretion, except with permission given by or under the authority of the Collector, and that no time should be lost, when the accretion is one which should, in your opinion, be appropriated to the Forest Department, in applying for that permission and in effecting a settlement.

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8. I have the honour to request that these instructions, copies of which as well as of the annexed Circular will be forwarded for the information and guidance of the District Officers, may be accepted as disposing finally of the questions raised in your letters under reply. (Commissioner's No. 71, dated 8th January 1890, to the Conservator of Forests.)

112E. No. 72.—In continuation of Circular No. 1238 of 11th April 1889, the following instructions are issued for the guidance of officers in the disposal of claims to *kacha* land preferred by the Forest Department :—

1. All claims to new land which have arisen owing to the action of the river in the preceding season shall be notified to the Collector of the district by the Conservator of Forests on or before the 1st November in each year. Each claim should be accompanied by a sketch map, showing clearly the course of the river during the previous cold weather, the changes which have taken place in the preceding season, and the position of the new land claimed on behalf of the Forest Department.

2. The duty of making and receiving the statement of claims may be delegated by the Conservator and the Collector to the Divisional Forest Officers and the Assistant Collectors.

3. No portion of any new land to which a claim has been duly preferred by the Forest Department shall be given out for cultivation except with the express sanction of the Collector, and such sanction should only be given in cases where the expediency of transferring the land claimed to the Forest Department appears to be *prima facie* doubtful. Intimation of sanction should in all cases be given to the Conservator of Forests.

4. No claim on behalf of the Forest Department can be entertained to land in existence on the 1st November in any year to which no claim has been preferred on or before that date.

5. The claims will, in the first instance, be scrutinized by the Assistant Collector, who will reserve the more important cases for his personal enquiry: other cases may be sent to the Mukhtiarkar for enquiry. When an Assistant Collector or a Mukhtiarkar intends to enquire into any case, he shall give the Divisional Forest Officer ten days' notice of the date fixed for the enquiry. After the enquiry has been completed the Assistant Collector will forward the papers, together with a report and any statement the Conservator or Divisional Forest Officer may wish to put in, to the Collector, who will then pass orders on the case.

6. Where it is necessary to demarcate the land, if the officer making the enquiry and the Divisional Forest Officer or other officer present on behalf of the Forest Department come to an agreement as to the proper

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boundary, marks may be laid down at once. In cases of disagreement, the decision of the Collector must be awaited before the land is demarcated.

7. All claims must be decided before the 1st May in the year following the year in which they are made.

8. After deciding a case, the Collector will immediately send a copy of his decision to the Conservator. If the Conservator is dissatisfied with the decision, he may appeal to the Commissioner within ten days after receiving a copy of the decision.

9. All cases at present pending should be disposed of, as far as may be, in accordance with these rules by the 1st May next if possible. A complete list of any which may remain still outstanding on that date should be furnished by the Conservator to the Collector or Deputy Commissioner by the 1st June following, provided it has been entered in this list but not otherwise. Any old *kacha* or part of a *kacha* still in existence after the fall of the river may be claimed afresh before the 1st November next and dealt with under the foregoing rules, in the same manner as if it was a new accretion, anything in rule 4 notwithstanding. (Commissioner's Circular No. 72, dated 8th January 1890.)

112F. The Commissioner in Sind has received a representation from the Deputy Conservator of Forests, accompanied by the correspondence in three cases, that the orders contained in Special Circular No. 24 (1), printed letter No. 71, and Circular No. 72, dated 8th January 1890, are resulting in the grave diminution of old Forest areas.

2. Without passing any judgment upon the exercise of the Collector's discretion in these particular cases, the Commissioner begs to invite attention to the following extract from Mr. Trevor's printed letter No. 71 to the Conservator of Forests :—

"I think you will find the Revenue Officers quite ready to recognize, in the absence of any special reason to the contrary, the expediency of leaving such *kachas* as adjoin original frontages in the hands of the Forest Department, and to take a reasonable view of any proposals you may make for enforesting *kachas*, even when they do not adjoin forest frontages, if they appear to be specially adapted for the production of timber and firewood in localities where the existing demand cannot be conveniently or sufficiently supplied from existing reserves."

3. The Government have recently been employing a special Officer in taking up additional areas of land for forest, as the needs of both Sind and Baluchistan are far beyond the existing supply, and the old forests are being rapidly exhausted. The Commissioner hopes, therefore, that Collectors will supplement these endeavours

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by giving as much *kacha* both in front of forests, and apart from it, as they can to the Forest Department, when that Department requires it. Cases will, of course, occur where the Collector, in view of serious loss to cultivators by erosion of their lands, feels bound to assist them by grants from alluvial lands thrown up, and the Commissioner would not like to interfere with the Collector's discretion in such cases. But in a recent voyage down the Indus Mr. James was greatly struck with the damage done by the river to the Government's invaluable forests, and every opportunity should be taken of making this good. In no case, should *kacha* land be given out which is actually in front of and adjoining a forest, except to the Forest Department. As regards other *kachas*, the Forest Department should not ask for them, unless they are in a position to plant and utilize them. And the rights of individuals to accretions under the law, of course, must not be interfered with.

4. It is quite true that *kacha* pays Government a larger revenue under crops than under timber or fuel, like woods under oak or larch on a large landed estate in England, and yet woods are necessary for the purpose of fencing the estate, and it will be recollected that cultivation on the protected side of the river embankments is more certain and pays even better than a *kacha*, while the extensions of canals that are being carried out every year give ample employment for the field labour available. And while the cultivation can be carried on away from the river, forests depend on river spill for their existence. The Commissioner has thought it advisable, therefore, to give this word of caution to Collectors when carrying out Circular No. 72. At any cost the old Riverain forests of Sind must be maintained in undiminished area.

5. One reason for encouraging cultivation on the protected rather than on the river side of the embankments is that, when lands are given out between the Government embankments and the river, instances have occurred of Zamindars raising protective embankments of their own, and so preventing the water from reaching the Government embankments. Then, in a year like the present, when the Zamindar's bands fail, the Government embankments fail also from not having been wetted, and widespread damage is the result. It must be a condition therefore, of the occupancy of all new *kacha* lands given out for cultivation in future, and the Zamindar must bind himself to it, that no bunds will be erected on the land, should there be a Government band behind it, without the permission in writing of the Executive Engineer, and that, if such permission is given, the Zamindar will raise no objection to the band being cut whenever it is, in the opinion of the Executive Engineer, necessary to do so. (Commissioner's No. 3524, dated 31st August 1894.)

112G. The following extract from letter No. 243, dated 25th January 1895, from the Commissioner in Sind to the Collector of Hyderabad shows that the claim of the Forest Department to any *kacha* is not absolutely time-barred by failing to prefer the claim on or before the 1st November :—

"2. The dates fixed by Mr. Trevor—1st November for claiming and 1st May as the latest date for deciding—were named so as to keep the Forest Department

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on the *qui vive* and prevent the great inconvenience caused by lands being claimed after the Revenue Department had given them out for cultivation and to prevent disputes dragging on for years.

"3. I do not like therefore to alter the dates, the more so as my supplement to Special Circular 63-A No. 3534 of 31st August 1899 will show the Assistant Collector that even if the Forest Department do not put in a claim at all, it is his duty to consider the interests of Government in the Forest Department at least as much as the applications of zamindars and not to give out *kachas* adjoining or fronting a forest without my sanction otherwise than to the Forest Department."

No. 3100 OF 1904.

REVENUE DEPARTMENT.

Commissioner's Office,

Karachi, 15th October 1904.

112H. Read draft instructions circulated with this office No. 1440, dated the 6th June 1904, and the following letters :—

No. 3750, dated the 11th June 1904, from the Collector of Sukkur.

No. 1753, dated the 13th June 1904, from the Deputy Commissioner, Upper Sind Frontier.

No. 3148, dated the 17th June 1904, from the Collector of Larkana.

No. 932, dated the 1st July 1904, from the Deputy Commissioner, Thar and Parkar.

No. 2778, dated the 16th July 1904, from the Collector of Karachi.

No. 1508, dated the 21st July 1904, from the Deputy Conservator of Forests, Sind Circle.

No. 5863, dated the 14/15th September 1904, from the Collector of Hyderabad.

Order of the Commissioner in Sind.

On careful consideration of the observations and suggestions received from the Deputy Conservator of Forests and the Collectors and Deputy Commissioners

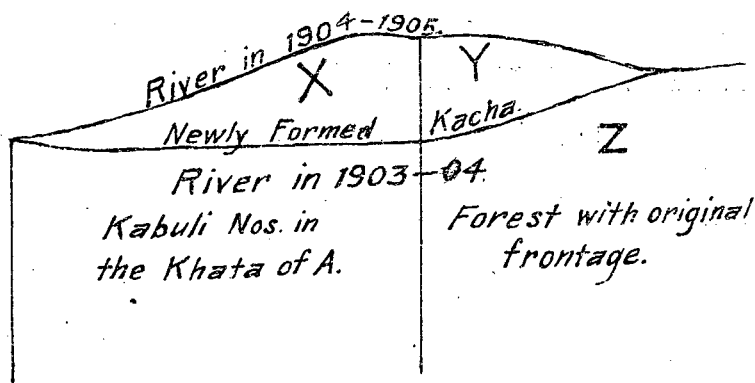
I. Acquisition and Disforestation of Land, etc.

A. ACQUISITION OF LANDS FOR FORESTS UNDER THE INDIAN FOREST AND LAND ACQUISITION ACTS—*continued.*

consulted, the Commissioner has decided to issue the following instructions as regards the principles on which claims of the Forest Department to *kacha* lands should be investigated and decided, and kindred matters.

2. The river frontage of a forest will be deemed to be an original frontage when such frontage has been in existence for five years. Frontages which have been in existence for a smaller number of years are termed recent frontages.

3. *Kacha* land will be considered to adjoin a frontage when it is included between the boundary of the frontage, the bank of the river and the boundary line of the forest produced up to the bank of the river. Thus, in the illustration given, *kacha* Y will adjoin forest; *kacha* X will not.



4. *Kacha* land adjoining an original frontage shall not be given, except to the Forest Department, by the Collector without the consent of the Conservator or Deputy Conservator in charge of the Sind Circle. Should the Collector desire to give out such land against the opinion of the Conservator or Deputy Conservator, he must refer the matter to the Commissioner.

5. When the Collector desires to give out to cultivation *kacha* land adjoining any recent frontage, he shall give notice to the Divisional Forest Officer to show cause why it should not be so given out. The Collector, after giving due weight to the representation of the Forest authorities, will then decide, on consideration of the balance of advantage or disadvantage to Government interests, of the equitable

I. Acquisition and Disforestation of Land, etc.

A. ACQUISITION OF LANDS FOR FORESTS UNDER THE INDIAN FOREST AND LAND ACQUISITION ACTS—*continued.*

claims of previous occupants and of the public, the question whether the land shall be given to the Forest Department or private occupants.

6. The degree of consideration to be given to the claims of previous occupants must depend largely upon the length of time during which the newly formed *kacha* had been submerged prior to re-appearance. When the submersion has been for a period of three years or less, the claims of previous owners as against the Forest Department should generally be considered paramount; where for less than five years, exceedingly strong; where for more than seven years, weak; where for more than ten years, except for very special reasons, of no account.

7. In the preceding rule attention should be given to the words "largely" and "generally." The rule is not hard-and-fast, but indicates the principle which is to be followed. It is recognised that, in certain cases, even after long submergence, the claims of zamindars may be superior to those of the Forest Department. But the proof should, in such cases, be strongly placed on the zamindars. On the other hand, even after a short period the claim of the Forest Department may have to be recognised, *e.g.*, on account of the importance of not cutting off the forest from the river.

8. To *kachas* not adjoining a forest within the meaning of the definition above given, the claim of the Forest Department must be decided on its merits, and as regards equitable claim to occupation on much the same grounds as a case would be decided between private claimants.

9. In all cases, Collectors are cautioned against excess of natural tenderness to the zamindar. When the question of right to a *kacha* lies between zamindar and zamindar, the decision is not infrequently in favour of the frontage owner.

10. The Forest Department as frontage owner must receive no less consideration than the frontage owning zamindar. Whenever a *kacha* intervening between the forest and the river is given to a zamindar, conditions must be laid down securing to the Forest Department the necessary access to the river and facilities for bringing water, if required, through the lands given to the zamindar.

11. It must also be borne in mind that the forest also loses by erosion, and, what the forest loses, zamindars somewhere have gained. It is not proper to let the zamindars gain at the expense of the Forest Department without recognising the right of the latter to compensating gains, even at some loss to the zamindars.

12. Before any claim preferred by the Forest Department to any *kacha* is decided by the Collector, he shall satisfy himself that the land has been personally inspected by the Divisional Forest Officer and the Assistant or Deputy Collector in charge, in consultation if possible, unless the Collector has been able to inspect the land himself.

I. Acquisition and Disforestation of Land, etc.

A. ACQUISITION OF LANDS FOR FORESTS UNDER THE INDIAN FOREST AND LAND ACQUISITION ACTS—*continued.*

13. When the Collector decides to allot any *kacha* to the Forest Department, he shall be at liberty, after hearing and giving full weight to any objections which the Forest Department may have to urge, instead of handing it over at once, to retain it under management of the Revenue Department for a period not exceeding three years, during which the land should be given out only on annual lease. At the end of that period, the *kacha*, unless there are indications of its becoming again submerged, will be handed over in permanency to the Forest Department.

14. After five years' management, the Divisional Forest Officer shall report to the Collector the area of the *kacha* which is still under cultivation and the progress which is being made in developing and utilising the forest, and the Collector, if he considers that the area in question ought not to continue under the Forest Department, but might with greater advantage be given out to cultivation, shall report the matter to the Commissioner, through the Conservator or Deputy Conservator in charge of the Circle.

J. W. P. MUIR MACKENZIE,
Commissioner in Sind.

No. 634 OF 1905.

REVENUE DEPARTMENT.
Commissioner's Office,
Karachi, 13th March 1905.

CIRCULAR.

1121. Whenever the Forest Department claims, by way of accretion or avulsion, any area exceeding 100 acres, then, unless the issue is, in the opinion of the Assistant Collector and Divisional Forest Officer, simple and obvious, the claim shall not be decided or reported on, as the case may be, until the spot has been inspected and the objections of the zamindars have been heard by both the officers jointly. This inspection shall be made as early as possible, and until it is made the land in dispute shall remain in charge of the Revenue Department, who may give it out on khas mokal. The Divisional Forest Officer and the Assistant Collector shall then make a joint report of their recommendations to the Collector.

2. In all cases where, from the record of occurrences within a series of recent years, it is clear that the river is in a state of frequent change, land should not change hands, either from the zamindars to the Forest Department or *vice versa*. When making any claim, the Divisional Forest Officer must invariably certify that he has reason to believe that the set which the river is then taking is likely to be permanent; when zamindars make a claim against the Forest Department, enquiry must be made on this point by the Revenue Officers, and

I. Acquisition and Disforestation of Land, etc.

A. ACQUISITION OF LANDS FOR FORESTS UNDER THE INDIAN FOREST AND LAND ACQUISITION ACTS—*concluded.*

before giving the claim in favour of the zamindars the Collector must certify that the set of the river promises to be permanent. Should the case be one of great importance and the question of permanence of the set of the river be difficult to determine reference may be made to the Engineer, Indus River Commission, whose opinion on the point will be final.

3. Whenever any forest is transferred by the action of the river from one District to another, the Collector of the District to which the Forest has been so transferred should be immediately informed by the Divisional Forest Officer of such transfer in the most formal and regular manner.

B. Disforestation.

113. It should be understood, that no land which has been finally constituted reserved forest under section 19 or section 34 of the Forest Act should be given in occupancy, or otherwise disposed of, without the previous sanction of Government. The case of waste lands which have been notified as proposed reserved forests under section 4 of the Act, or as protected forests rest on a different footing. Instances may occasionally occur when *assessed* waste lands belonging to either or both the above categories may advantageously be exchanged for occupied lands which fall within the proposed forest boundaries, or one more suitable for forest purposes, and where the delay incidental to obtaining previous sanction may result in the failure of the negotiations, whenever prompt action is necessary in such cases, Forest Settlement and Demarcation Officers may be authorized to effect exchanges at their discretion, with the concurrence of the District Forest Officer, without previous sanction of Government. The authority hereby given does not extend, however, to the utilization, for exchange purposes without previous sanction, of any *unassessed* areas included in forests.*

114. The Government of India is not disposed to admit the argument that reserved forest land should be given up merely because it is barren. As a general rule, land which is "poor," "worthless" (for other purposes), etc., should be kept under such forest growth as it is capable of producing.†

115. The sanction of the Government of India is not required to the exclusion from forests of lands which were merely notified under section 4 of the Indian Forest Act, 1878, nor is it necessary for Government to publish any formal notification directing their disforestation.‡

* Government Resolution No. 6429, dated 6th September 1893.

† Government of India, Department of Revenue and Agriculture, No. 966-F, dated 13th October 1887, *vide* Government Resolution No. 7640, dated 9th November 1887.

‡ Government Resolution No. 6028, dated 25th July 1885.